COMPULSORY ARBITRATION IN NEW ZEALAND [1]

SUMMARY

New Zealand not prosperous from 1879 to 1895. Conditions under which the arbitration act was passed in 1894 Mr. Reeves its author, 661. — Increase of associations and unions, 669 — Conciliation expected to be sufficient, but compulsory arbitration in fact resorted to, 672. — "Contract superseded by status," 673. — Agricultural laborers not affected, 675 — Minimum wages and their influence on efficiency, 678 — Preference to unionists, 679 — "Fair wages" and the "living wage," 683 — Rigidity of wages, and the inefficient employer, 686. — Uncertain whether workers' welfare has been in fact advanced, 687. — Influence on manufacturers and on cost of production; other factors affecting them, 689 — Opinion of employers and workmen, 692 — Amendment act of 1908 due to dissatisfaction among laborers, 693 — Strikes in 1906–1908, 695 — Peculiar case among miners, 697, and in the state collieries, 701 — Provisions of the amendment act of 1908, 704 — Voluntary arbitration again sought to be encouraged, 706 — Workers may evade the act altogether by the device of cancelling registration, 707. — Its future still uncertain.

With the exception of a few brief intervals of prosperity, times were hard in New Zealand from 1879 to 1895. The population of the colony increased considerably, but through an excess of births over deaths rather than an excess of immigration over emigration. From 1885 to 1891 there was an excess of emigration over immigration of about 20,000. This was the so-called "soup-kitchen period," when wages were low, when there were many unemployed, and when able-bodied men received aid from public and private funds. In 1889 it was alleged that

[1] The writers desire to acknowledge their indebtedness to Mr John MacGregor, of Dunedin, for important suggestions and criticism

sweating existed in Dunedin and elsewhere, especially in the clothing trade, and a commission of nine members was appointed to investigate the matter. Six of the commissioners found no sweating in the colony, while a minority of three reported that it existed, "although only to a limited extent." One result of the investigation was the passage of the Factories Act, 1891, designed chiefly for the protection of women and children employed in factories. Another result of this and other causes was the compulsory arbitration law of 1894, designed chiefly to prevent strikes, but also to encourage organization and improve the conditions of labor.

In the year 1890 occurred the great maritime strike, which arose in Australia and soon spread to New Zealand, beginning in August and lasting until the first week in November. This, the only serious strike that the colony had ever had, made so profound an impression on the public mind that people were ready to listen to suggestions looking toward the prevention of such evils. The suggestion of compulsory arbitration came from the side of the laborers, who, beaten in the strike, looked to the State to do for them what they had been unable to do for themselves.[1] The Seamen's Union and other labor organizations took an active part in the political campaign of 1890, helped to win victory for the Liberal Party in the election of December 5, and strongly supported the labor legislation which followed, including the compulsory arbitration law. The author of that law was the Hon. William Pember Reeves, Minister of Labor in the Ballance Government.

It is impossible to say who first suggested compulsory arbitration as a remedy for strikes. The thought

[1] Parliamentary Debates, vol lxxviii, p. 161.

must have occurred to many minds during the trying times of 1890. Even before the strike, Mr. J. A. Millar, then secretary of the Seamen's Union and of the Tailoresses' Union, giving evidence before the Sweating Commission, said: "As to arbitration, my idea is that a competent judge should be appointed by the Government in the same way as the judge of any court, and that he should call evidence on both sides. I mean a permanent judge, who should be paid by the State for the settlement of these disputes; because it is in the interests of the State that no such disputes should exist. I would have this judge assisted by three representatives of each side, who should call evidence, and the decision of the judge should be binding on both parties for a certain time — say, six months. If workmen refuse to obey the court, pressure should be brought to bear upon them by their societies."[1] Later in the year, Mr. W. Downie Stewart, Sr., brought in a bill called the "Strikes and Board of Conciliation Bill," based on the voluntary principle. Compulsory arbitration was suggested in committee, but was strongly opposed by Grey and Ballance.[2]

None the less, the passage of the compulsory arbitration law of 1894 was due to the enthusiastic efforts of Mr. Reeves, supported by the labor leaders. The bill was first drafted in 1891, but did not become law until the end of the session of 1894, after it had been passed three times by the House and rejected twice by the Council because of its compulsory features. The purpose of Mr. Reeves was two-fold. He says: "What the act was primarily passed to do

[1] Parliamentary Debates, vol. cxlv, p. 188.

[2] Parliamentary Debates, vol. lxxviii, pp. 116, 166, 411.

was to put an end to the larger and more dangerous class of strikes and lock-outs. The second object of the act's framer was to set up tribunals to regulate the conditions of labor." [1] Mr. Reeves' chief idea was to prevent strikes, and a great deal more was said in Parliament about industrial peace than about the improvement in the conditions of labor which the act was to bring about. But there can be little doubt that the unionists, without whose help the act could not have been passed, thought more of the latter than of the former result, and looked upon the act as an important part of the new legislation for the benefit of the working class.[2]

Mr. Reeves considered the compulsory feature essential to the successful working of the law. He thought the Massachusetts system of arbitration almost ideal, except that it was voluntary and not compulsory.[3] In an interesting discussion in the House on September 16, 1892, Sir John Hall strongly attacked the compulsory features of the bill, saying that they were opposed to conciliation, were designed to force the workers to join the unions, and should be condemned as class legislation, which would tend not to the reconciliation of classes but to their estrangement. Mr. John Duthie condemned it as a piece of amateur legislation which would have a serious effect in checking enterprise and the investment of capital. Mr. Harkness said that the bill was drafted wholly in the interests of unionism. Mr. James Allen said that the workers would gain nothing by compulsory arbitration. Mr. Fergus accused the advo-

[1] Reeves, State Experiments in Australia and New Zealand, vol. II, p. 135, Parliamentary Debates, vol. lxxix, p. 379, vol. cxlv, p. 208.

[2] Parliamentary Debates, vol. lxxviii, p 185.

[3] Broadhead, State Regulation of Labor and Labor Disputes in New Zealand, p. 8.

cates of the bill of being demagogs. Some days later, in the Council, Mr. W. Downie Stewart strongly opposed the bill on the ground that it would tend to encourage disputes, that awards would be hard to enforce, and that business affairs were too complicated to admit of a fair decision by any court. In view of later events some of these comments seem prophetic.[1]

The bill was not adequately considered, either by its friends or its opponents. Mr. Reeves says: "During the three years and a half in which its fate was in suspense, it neither roused the least enthusiasm nor attracted much attention. Only the trade union leaders studied its provisions, decided to support it, and did so without flinching." Mr. Reeves admitted that it was a piece of experimental legislation. "Frankly," he said, "the bill is but an experiment, but it is an experiment well worth the trying. Try it, and if it fail, repeal it."[2] The Minister of Labor had set his heart on the bill; it had the support of the government; and, despite the opposition of a minority representing the business interests of the colony, it was finally put through, and received the assent of the Governor on August 31, 1894.

The act of 1894 was entitled: "An act to encourage the formation of industrial unions and associations and to facilitate the settlement of industrial disputes by conciliation and arbitration." By the amendment of 1898 the words, "to encourage the formation of industrial unions and associations," were left out. The act came into force on January 1, 1895, and the first case was decided toward the end of the year. Mr. Reeves left the Colony in 1896, to become Agent-

[1] Parliamentary Debates, vol. lxxviii, pp 151–186, 405–416.

[2] Reeves, op cit., vol ii, p 107

General for New Zealand in London, afterwards High Commissioner, a post which he resigned in 1908 to become Director of the London School of Economics. Being absent from the Colony, he had little to do with the development of the act, which was amended almost every year as difficulties arose which the author could not have foreseen. The original act and the various amendments were united into a Compilation Act in 1905, amended again in the same year, and yet again in 1906. The latest and most important amendment was made in 1908.[1]

The act as it stood in 1905 has been described so often that only a brief account of it is here given, with attention to some points not usually mentioned. An excellent summary is given in Broadhead's *State Regulation of Labor in New Zealand*, Chapter 3.

The act provides for the registration of industrial unions and associations of either employers or workers with the Secretary for Labor. As few as two employers or one firm with two members may form a union, but, in the case of workers, seven are required.[2] The effect of registration is to make a union, or an association of unions, a body corporate, and renders both the union and its members subject to the jurisdiction of the Conciliation Board and the Arbitration Court. Any industrial union may apply to the Registrar at any time for the cancellation of its registration, but such cancellation does not relieve the union or any of its members from the obligation of any industrial agreement or award in force at the

[1] Industrial Conciliation and Arbitration Acts Compilation Act, 1905, The Industrial Conciliation and Arbitration Amendment Act, 1908.

[2] By the amendment act of 1908, the number of persons necessary to register an individual union was increased from two to three in the case of employers, and from seven to fifteen in the case of workers

time, nor from any penalty or liability. The cancellation of registration on the part of an industrial union of workers removes it from the jurisdiction of the Board and the Court. But employers cannot thus escape. Arbitration, then, is in a sense voluntary for the workers but compulsory for the employers.

The colony is divided into eight industrial districts, in each of which there is a clerk of awards, appointed by the Governor. In every industrial district there is a Board of Conciliation for the settlement of disputes arising within the district. The Board consists of three or five members, one or two being elected by the industrial unions of employers, an equal number by the industrial unions of workers, and the third or fifth, as the case may be, elected by the other members. The Amendment Act of 1908 abolished the Board of Conciliation and provided for Councils of Conciliation to take their place.

An industrial dispute can be brought before a board through the clerk of awards by a trade union, industrial union, industrial association, or employer. If a settlement is arrived at by the parties, it is set forth in an industrial agreement. Otherwise the Board makes a recommendation for the settlement of the dispute, which becomes enforceable as an industrial agreement unless the dispute is referred to the Arbitration Court within one month.

Before the year 1901, a case referred to a board had to be heard by that body before it could go to the Arbitration Court, but in that year an amendment was passed permitting either party, after going through the formality of filing the dispute with the Board, to refer the matter to the Court, without any hearing by the Board or any agreement or recommendation. The old rule was re-established in 1908.

A neglected clause of the act provides for the creation of a special board of conciliators composed of experts in the particular trade to which a dispute relates, elected in equal numbers by the employers and the unions of workers concerned, and vacating their office on the settlement of the dispute. Oddly enough, such a board has been set up only once, in the case of the strike of tramway employees in Auckland in May, 1908. The new conciliation councils established by the act of 1908 are very similar to these special boards.

There is one Court of Arbitration for the whole of New Zealand. It consists of three members appointed by the Governor: a president, who has the status of a judge of the Supreme Court, and two other members, often called assistants or assessors. One of the assessors is appointed on the recommendation of the industrial unions of employers, the other on the recommendation of the industrial unions of workers. By an amendment passed in 1906, the title of "President of the Court" was altered to "Judge of the Court." Since the assessors are inclined to be partisan, the decision is virtually in the hands of the judge.

The Court may limit the operation of any award to any city, town or other part of an industrial district; or, on the application of any of the parties, it may extend the provisions of an award to another industrial district. Thus, a number of awards have been extended so as to apply to the whole of the North Island, and some have been given a still wider extension. Extension of awards is usually granted at the request of employers to prevent unfair competition on the part of their rivals in business.

Every award binds not only workers' unions but also individual workers, whether members of unions

or not, working for any employer on whom the award is binding, and if any such worker commits any breach of award he is liable to a fine not exceeding £10. Before the year 1900 only workers' unions were liable for breach of award. In that year non-unionists were made liable, and, by the amendment of 1905, individual unionists also were made liable. Unions of employers, unions of workers, and individual employers are liable to fines not exceeding £500, but individual workers are liable to an amount not exceeding £10.

Mr. John MacGregor has drawn attention to a curious state of affairs existing from 1898 to 1905, when a strike or a lock-out, altho it might be a dispute, was not a breach of award and could not be punished under the act. Under the act as drawn up by Mr. Reeves, the Court could declare a strike or a lock-out to be a breach of award, but in 1898 the act was amended with the result as stated. Referring to these years, Mr. MacGregor says: "An employer who pays, or a worker who accepts, less than the minimum wage thereby commits a breach of award; but, if all the men employed in a factory at the minimum wage were to refuse some morning to resume work, except at a higher wage, they would not be committing a breach, because the Court can not order any man to work for the minimum." Strikes and lock-outs were made statutory offences by the amendment of 1905, which prescribed fines not exceeding £100 in the case of a union, association, or employer, or £10 in the case of a worker. Under this law a large number of strikers have been punished in the past three years.

Fines may be recovered in a summary way under the provisions of the Justices of the Peace Act, 1882,

and all property belonging to the judgment debtor may be seized and sold for the satisfaction of the debt. Where the property of a union or association is insufficient to pay the fine, the members are liable to an amount not exceeding £10 for each person. If individuals (employers or workers), alleging that they have no property, refuse to pay the fine, at the discretion of the Court they may be ordered to pay, after which, if they still refuse, they may be imprisoned for contempt. However, imprisonment has never been inflicted for this offence, and, under the act of 1908, it is no longer permitted.

By the act of 1905, all fines were made payable into the public account. Before this time fines levied upon employers were paid into the treasury of the workers' unions, a practice tending to multiply disputes and encourage other abuses.

As intended by its author, the act has greatly encouraged the formation of industrial unions and associations. Only unions or associations could be registered under the act; hence workers desiring to enjoy the benefits of conciliation and arbitration were obliged to form unions, and these soon were federated into associations. The employers, at first, had few organizations, but presently, in order to combat the efforts of the labor unions, they formed unions and associations of their own.

In the year 1896 there were 65 unions of workers with 9370 members; and only one union of employers, with 30 members.[1] In the year 1908, there were 325 unions of workers with a membership of 49,347; and 122 unions of employers with a membership of 3918.[2] Besides these, there are industrial associa-

[1] J. Ramsay Macdonald, Arbitration Courts and Wages Boards in Australasia, Contemporary Review, March, 1908

[2] Annual Report of the Department of Labor, 1909, p. 13.

tions of employers and of workers, frequently employing paid secretaries who are prominent in industrial disputes. These secretaries, like the "walking delegates" of American unions, have been accused of fomenting disputes, but it is hard to see how the work of the associations could be carried on without them. Mr. Macdonald thinks that arbitration has "taken the steel out of the unions," that it has increased their membership while taking away their fighting spirit. But the general opinion among both employers and workers is that unions of both classes have been greatly strengthened, and the events of the past few years have shown that the workers have a good deal of fighting spirit left.[1]

The act of 1894 was designed to provide for the settlement of serious disputes, such as would be likely to lead to strikes or lock-outs. But in practice any difference between employers and workers is considered a dispute within the meaning of the act.[2] As has been clearly shown by Mr. MacGregor, "disputes" have multiplied, and the law, instead of being used to settle only serious cases threatening to "arrest the processes of industry," has created something which is not arbitration at all, but a system of governmental regulation of wages and conditions of labor in general.[3] Doubtless Mr. Reeves neither intended nor expected such an outcome, but in the light of subsequent events it is clear that compulsory arbitration could have no other result. Mr. MacGregor very appositely quotes Machiavelli's saying: "Let

[1] Aves, Report on the Wages Boards and Industrial Conciliation and Arbitration Acts, London, 1908, p 203

[2] Parliamentary Debates, vol lxxvii, p 30, Broadhead, op cit , p 49

[3] Industrial Arbitration in New Zealand, by J MacGregor, M A , Dunedin, 1901 Also other articles by Mr MacGregor

no man who begins an innovation in a state expect that he shall stop it at his pleasure or regulate it according to his intention."

The arbitration act was designed to improve the condition of the working class as well as to prevent strikes, and, therefore, practically all of the disputes have originated with the workers, while the employers have occupied the position of defendants. Wages were low in 1894, but toward the end of the following year business conditions began to improve and an era of prosperity began which lasted without a break until the winter of 1908. Had the system of conciliation and arbitration not existed, the workers would have looked to their employers to grant the concessions which they desired. But since the legal machinery was at hand, they proceeded to use it to obtain the same results. When any number of workers desired to obtain higher wages, shorter hours, or other concessions, they formed a union of seven or more persons, were registered with the clerk of awards of the industrial district in which they were, and proceeded to formulate their demands. These would be sent by letter to the employers concerned, and then, if the demands were not granted, a dispute was created which presently came before the Board of Conciliation.

Mr. Reeves thought that most of the cases would be decided by the boards and that only the most serious cases would come before the Court. In the Session of 1894 he said in Parliament: "I do not think that the Arbitration Court will be very often called into requisition; on the contrary, I think that in 99 cases in 100 in which labor disputes arise they will be settled by the Conciliation Boards; but unless you have in the background an Arbitration Court

the Conciliation Boards will not be respected, and they will be virtually useless." Strange to say, the boards were not respected because of the existence of the Court, and because it was so easy to appeal to the higher tribunal.

In the early years of the act many cases were settled by the Boards, but the contending parties soon perceived that the Boards were not true boards of conciliation, but arbitration courts of first instance, and, wishing to have the decision of the highest tribunal, they carried most of the cases to the Arbitration Court. The workers were fairly well satisfied with the Boards, since the decisions were usually in their favor. But the employers were very much dissatisfied, and through their influence the amendment of 1901 was passed, permitting either party to a reference to go straight to the Arbitration Court. From the coming into operation of the act until December 31, 1901, 51 cases were settled by the Boards and 100 by the Court. From January 1, 1902, to December 31, 1905, 20 cases were settled by the Boards and 163 by the Court. In the year 1906 only two cases were settled by the Boards, and in the year 1907, up to May 31, not one case was thus settled, altho several recommendations were made.[1] Besides, of the cases settled by the Boards in previous years, it is probable that nearly all could have been settled by friendly conciliation without the intervention of the Boards. Since the Act of 1908 went into operation, a number of minor disputes have been settled by the new Councils of Conciliation and the Court has been relieved of many trivial cases.

Many reasons have been given for the failure of conciliation. Mr. Reeves himself says that the sys-

[1] Broadhead, op. cit , p. 35, Aves, op. cit , p. 93

tem was tedious and cumbrous.[1] In one case a Board spent twenty-six days considering a dispute which was later settled by the Court in half a day.[2] Mr. Broadhead says that the members of the Boards were seldom specially qualified, that they were usually in sympathy with the labor party and were partisan in their decisions.[3] Mr. Aves gives as the chief cause of failure formality of procedure and partisanship.[4] But Mr. MacGregor points to the root of the trouble when he says: "It is impossible to combine in the same scheme conciliation and compulsory arbitration."[5] In other words, conciliation and compulsion are opposed to each other, and the so-called conciliation boards are really arbitration courts of first instance, effective only in so far as they exercise a degree of compulsion, but for the most part ineffective when there is appeal to a higher court.

That governmental regulation is incompatible with freedom of contract was brought out in a forcible way by the Chief Justice, Sir Robert Stout, in a decision by the Court of Appeals in May, 1900. He said: "All contracts regarding labor are controlled and may be modified or abrogated. The Court can make the contract or agreement that is to exist between the workman and the employer. It abrogates the right of workmen and employers to make their own contracts. It in effect abolishes *contract* and restores *status*. The only way the act can be rendered inoperative is by the workmen not associating or not joining any union. No doubt the statute, by abolishing *contract* and restoring *status*, may be a reversal

[1] State Experiments, vol. II, p. 131.

[2] Parliamentary Debates, vol. cxlv, p 248.

[3] Broadhead, op. cit., p. 31.

[4] Aves, op. cit., p. 92.

[5] Industrial Arbitration, p. 21.

to a state of things that existed before our industrial era, as Maine and other jurists have pointed out. The power of the legislature is sufficient to cause a reversion to this prior state, altho jurists may say that from *status* to *contract* marks the path of progress." [1] In a decision rendered in July, 1906, the Chief Justice said: "The right of a workman to make a contract is exceedingly limited. The right of free contract is taken away from the worker, and he has been placed in a condition of servitude or status, and the employer must conform to that condition.[2]

The judges of the Arbitration Court have been invariably jurists of high standing. There have been six judges in fifteen years, — Justices Williams, Edwards, Martin, Cooper, Chapman, and Sim. The position of judge of the Arbitration Court is not an enviable one and the judges have always been glad to be transferred to the regular work of the Supreme Court.

Some idea of the work done by the Conciliation Boards and the Arbitration Court may be got from the fact that the total number of awards, agreements, and recommendations made under the act from its inception until May 31, 1907, was 535, affecting 78 trades, and including 339 awards, 137 agreements, and 59 recommendations.[3] The decisions have to do with butchers, bakers, builders, miners, slaughtermen, tailors, tanners, and nearly all important occupations except agriculture, the professions and the governmental service.

A recent decision relating to agricultural laborers is most extraordinary. It originated in a dispute

[1] Book of Awards, vol 1, p 304, Broadhead, op cit, p. 111.

[2] Broadhead, op cit, p 93.

[3] Aves, op. cit., p 93, Broadhead, op cit, p 213

between the Canterbury Agricultural and Pastoral Laborers' Union and the Canterbury Sheep-owners' Industrial Union of Employers and about 7000 farmers in the Canterbury industrial district. The dispute was referred to the Conciliation Board on November 16, 1906, and on the same day was referred by the union to the Arbitration Court. After hearing much evidence and thoroly discussing the case in all its bearings, the Court decided, on August 21, 1908, that no award should be made, on the ground that it was impracticable to fix any definite hours for the daily work of general farm hands, and that the alleged grievances of the farm laborers were not sufficient to justify interference with the whole farming industry of Canterbury. Mr. J. A. McCullough, the workers' representative on the Arbitration Court, and a pronounced partisan, strongly dissented from the finding of the Court. In his formal protest he said: "It appears to me a most extraordinary and despotic proceeding to say that the largest section of the workers in this Dominion should be denied the right to have the conditions of their livelihood, their wages and hours of labor, fixed by means of the legislation which has been expressly provided for this very purpose." [1] And yet, the amendment act of 1908, passed a few months later, expressly permits the Court to refuse to make an award if for any reason it considers it desirable to do so.

The awards and agreements made under the act cover a great variety of subjects, among which the most important are, — minimum wages, hours of labor, permits to incompetent workers, limitation of apprentices, periods of apprenticeship, piecework, distribution of work, holidays, meal hours, provision

[1] The Press, Christchurch, August 22, 1908

of tools, modes of payment, notice of dismissal, scope and duration of awards, interpretation of awards, extension of awards, breaches of awards, and fines. In most of the awards, particularly during the early years of the act, the workers gained something. Mr. Aves says: "In the whole series of awards, there has been only one insignificant case when wages have been reduced, and two when hours have been increased. There have, however, been many instances in which, on renewed application of the Court, no fresh award has been granted, and when, therefore, conditions have been left unaltered." [1]

In most of the awards a minimum wage is granted, and this is never a bare subsistence minimum, but rather an ideal wage such as an able-bodied worker of average ability ought to earn. It has generally been fixed at a point higher than the average wages prevailing in the trade at the time the award was made.

One important effect of the establishment of so high a minimum wage is that workers of less than average ability find it hard to obtain constant employment. This difficulty has been partially met by granting under-rate permits to such workers. But most workers, other than old men, do not like to be branded as incompetent, so that not many under-rate permits are applied for or granted. During the years 1902 to 1907, 1288 permits were granted, 603 by chairmen of conciliation boards, 614 by secretaries of unions, and 71 by stipendiary magistrates, while in 121 cases the applications were not granted.[2]

An interesting case occurred after the Auckland Furniture Trade award of February, 1903, when 31 workers out of a total force of between 200 and

[1] Aves, op cit., p 99

[2] Aves, op. cit., p 151

300 were discharged or suspended by different employers on the ground that they were not worth the minimum wage granted by the award. The Secretary for Labor, as well as the workers' union, took proceedings against the employers for breach of award, but the complaints were dismissed by Justice Cooper, who held that "the employers had done nothing beyond what a reasonable employer is entitled to do in the ordinary regulation of his business."[1] The workers were much dissatisfied with this decision, and an amendment was passed in 1905 for the express purpose of declaring such action on the part of employers to be an offence. "In order to maintain an appearance of equality, it was, of course, necessary to extend the provision to analogous action on the part of workmen, and thus it came about that strikes as well as lock-outs were made offences."[2]

It is often stated that the granting of a minimum wage works a hardship upon the worker of more than average ability, since the employers, being compelled to pay the minimum wage to a large number of workers of less than average ability, are unable, if not unwilling, to pay more to superior workers. The general opinion among employers and theorists is that the average wage tends to become the minimum, the minimum tends to become the standard, and the standard tends to become the maximum.[3]

A recent investigation by the Department of Labor shows that wages are by no means so uniform as one

[1] Book of Awards, vol IV, p. 135, Broadhead, op. cit., p 73

[2] Manuscript by J MacGregor, 1908.

[3] Broadhead, op cit., p 72, Aves, op. cit., p 194, Clark, the Labor Movement in Australasia, p 230, Labor and the Arbitration Act, a speech by the Hon Dr Findlay, June 17, 1908

would expect from a theoretical point of view. Out of 2451 employees in factories in Auckland City, excluding under-rate workers and young persons, 949 received the minimum rate, and 1504, or 61 per cent of the whole, received more than the minimum. In Wellington, the per cent receiving more than the minimum was 57; in Christchurch, 47; and in Dunedin, 46.[1]

The most reasonable conclusion that one can draw from these facts in relation to the theory stated above, which certainly has some validity, is that the minimum wages awarded in most of the trades are not high, that the average worker fully earns the award rate, and that it pays the employer in most cases to give higher wages to the better men. This conclusion is substantiated by a consideration of the prosperity of New Zealand and of the slight effect which the awards seem to have had on the prices of manufactured articles. It should also be remembered that the superior worker is more regularly employed than the average, so that his yearly wage must be higher than the amount indicated by the figures of weekly wages only. But where the minimum is placed too high there must be a tendency toward a levelling down of wages, which cannot but be discouraging to the more efficient worker, and injurious to the industrial efficiency of the Dominion. For this reason, the objection of the unions to piece-work is probably ill-founded, and, in so far as the Arbitration Court has decided against the piece-work system, it has injured the efficient worker and increased the cost of production of manufactured articles.

In order to prevent such results, Dr. Findlay has suggested a double, or, rather, a primary and a sup-

[1] Annual Report of the Bureau of Labor, 1909, pp. 133–143

plementary standard, — the primary standard to be a "living wage," based on the reasonable "needs" of workers of different classes, and the supplementary wage to be based on the extra work done by the more efficient workers. In other words, there should be a minimum wage based upon the day's work, and an additional wage based upon the work of the day as a premium upon efficiency.[1] Quite apart from the theoretical difficulties of Dr. Findlay's suggestion, the proposal to establish an "exertion wage" was not well received by the labor leaders of New Zealand, who appear to have an ineradicable objection to anything like a task system, and a profound dislike of "pace-makers, chasers, runners and bell-horses." [2]

In the decisions of the Arbitration Court, questions as to wages and hours of labor occupy first place, but close after these comes the claim of unionists for preference of employment. The Act of 1894 was specially designed "to encourage the formation of industrial unions and associations," and at first non-unionists were neither recognized by the law nor under the jurisdiction of the Court. It was, therefore, natural that the Court should favor unionists. The first decision recognizing the unionists' claim to preference was given in December, 1896, when the following clause was inserted in the Canterbury Bootmakers' Award: "Employers shall employ members of the New Zealand Federated Bootmakers' Union in preference to non-unionists, provided that there are members of the union who are equally qualified with non-members to perform the particular work required to be done and are ready and willing to

[1] Findlay, Labor and the Arbitration Act, Wellington, 1908, John A. Ryan, A Living Wage, New York, 1906.

[2] The Evening Post, Wellington, July 28, 1908.

undertake it." [1] Since, however, the employer was the judge of the qualifications of his employees, the unionists did not gain much by this decision. In later awards it was usually specified that preference was granted only when the union was not a close guild but practically open to every person of good character who desired to join. Preference was not usually granted where the unionists were but a fraction of those working at a trade.[2]

Among the arguments in favor of preference, the chief is that the unionists go to much trouble and expense to obtain concessions, not only for themselves but for other laborers, and that non-unionists can obtain preference by joining the union. Also, preference is sometimes regarded as a compensation to unionists for having given up the right to strike. Preference, too, protects active unionists from being victimized by their employers. Again, unionists generally object to working in the same shop with non-unionists. In brief, the question is practically the same as that of the closed shop in the United States.

Non-unionist laborers object to preference on the ground that it tends to compel them to join the union. Preference, they say, is compulsory unionism. Employers object to preference because it increases the power of the unions and interferes with the employer's freedom in employing and dismissing. In some cases they would discriminate against unionists, whereas, when preference has been granted, they are obliged to examine the employment book kept by the union in order to give the unionists the first

[1] Book of Awards, vol. 1, Broadhead, op. cit., p 105.

[2] Reeves, op. cit., vol. II, p. 112

chance of employment. Failure to do this is generally regarded as a breach of award.

Preference has been granted in most of the awards. Out of 159 awards in force on March 31, 1906, preference had been granted in 115 cases, refused in 40 cases, and not asked for in 4 cases.[1] But since preference is usually granted on conditions similar to those mentioned above, the unionists are dissatisfied and demand unconditional preference, which would prevent the employment of non-union men while any unionists were available, whether competent or not. The Arbitration Court, except in a few minor cases, has refused to grant unconditional preference, and the unionists, realizing that preference to an open union is no preference at all, now look to Parliament for redress and demand statutory unconditional preference to unionists.[2] This the present government are opposed to granting, and even Mr. Millar, until lately Minister of Labor, does not favor it.[3]

In the administration of the act, the sympathy of the Department of Labor is generally with the workers, and the employers complain of partiality. From March 31, 1900, to March 31, 1904, there were 213 cases of breach of award brought against employers, in 171 of which convictions were secured. In the same time there were only four cases brought against workers. Since the inspectors of factories were made inspectors of awards, in 1903, more complaints have been brought against workers, particularly those taking part in the strikes of the past few years. One would expect a large proportion of cases for

[1] Broadhead, op. cit., p. 113.

[2] Annual Report of the Trades and Labor Councils of New Zealand, Dunedin, 1907, p 38.

[3] Parliamentary Debates, vol. cxlv, p. 188.

breach of award to be brought against employers, since the awards have usually been made for the benefit of the workers. Also, employers have little to gain by prosecuting workers. When fines are inflicted upon employers for paying less than award rates, they are made large enough to include back wages, except when the workers have knowingly accepted the illegal rates. The inspectors frequently recover back wages without prosecution.[1]

There is a pretty well-defined theory in justification of compulsory arbitration in the minds of those who favor that method of settling industrial disputes. The competitive system, in this view, has resulted in two great evils, — sweating and strikes. Under sweating the workers receive less than enough to secure a decent subsistence for a human being. The strike is a form of private war in which the strongest win, not those who have justice on their side, and which causes great inconvenience to the public, who are a third party in every strike. All the evil and injustice should be done away with by an appeal to a court, which should establish relations between employers, workers, and the public according to principles of justice.

On the surface the theory appears to be highly reasonable, but when put into practice, serious, if not fatal difficulties arise. One of these has to do with the discovery of specific principles of justice; the other with the enforcement of awards supposedly just. So great are the difficulties in the way of discovering principles of justice in the determination of wages, that one of the most distinguished of the former presidents of the Arbitration Court has stated that no such principles exist.

[1] Annual Report of the Department of Labor, 1909, p. 14

The theory of fair wages that appears to prevail is the doctrine of the living wage, stated both in its negative and its positive form. Stated negatively, the theory holds that extremely low wages, such as are found under the sweating system, are not fair wages, because insufficient to afford a decent living according to the colonial standard.[1] Stated positively, a fair wage is a wage which is sufficient to give the worker a decent living according to the colonial standard, which is higher than the British standard, considerably higher than that of continental Europe, and immeasurably higher than that of the Chinese or Indian coolie. This standard applies, of course, only to the able-bodied worker, because the aged and infirm are not worth so much to the employer. Here is introduced another principle, the principle of payment according to the ability of the employer, and how these two principles can be reconciled it is not easy to say.

Other difficulties arise when the theories are applied to actual cases. For example, a wage which would be quite sufficient for a single man might be inadequate for a married man, and should vary with the size of his family and their ability to contribute to their own support. But if a married man is to receive more than a single man of the same ability, he will find it hard to get employment except in the most prosperous times. Again, a living wage for a skilled worker must be higher than that for a common laborer, since his standard of living is higher. This arises from the fact that skilled laborers are scarce; but here another complicating factor is introduced, the supply of labor, which, in densely populated countries, threatens to destroy not only the theory but the possibility of a living wage.

[1] Aves, op. cit., p. 100

These and other complications prevent the creation of a body of legal principles defining and explaining the nature of fair or reasonable wages, but do not prevent the Court from bearing in mind the desirability of keeping the customary standards of colonial life from falling, and the equal or greater desirability of raising those standards as much as possible. The doctrine of a living wage, then, is not an established legal principle, but an ideal toward which people may strive. The Arbitration Court, not being bound by precedent nor hampered by technicalities, and having legislative as well as judicial powers, may do its best to attain the ideal within the limits fixed by economic law. But one hears little about economic law in New Zealand, and much more about justice and fairness in distribution, as tho there was no such thing as market value and the effort to attain the desirable had no relation whatever to the possible.

The doctrine of a living wage is nothing more than a starting point for the workers of New Zealand. They demand a living wage and as much more as they can get. Realizing the fact that some employers can afford to pay more than others, the workers desire that some form of profit-sharing be established by the Arbitration Court.[1] But the Court has repeatedly stated that profit-sharing could not be taken as the basis of awards, on the ground that it would involve the necessity of fixing differential rates of wages, which would lead to confusion, would be unfair to many employers, and unsatisfactory to the workers themselves.[2]

In practice, the awards appear to be based on two main principles: first, the desire and intention of the

[1] Otago Daily Times, May 18, 1907.

[2] Book of Awards, vol. VII, p 50, Broadhead, op. cit , p 61.

Court to secure a living wage to all able-bodied workers; second, the desire of the Court to make a workable award, that is, to grant as much as possible to the workers without giving them more than the industry can stand. In doing this regard must be had to the prosperity of a given industry as a whole, if not to the profits of individual employers. It is usually taken for granted that no reduction will be made in the customary wages in any industry, and, in times of depression, this might be regarded as a third regulative principle. Again, it is the custom of the unions, in formulating their disputes, to demand more than they expect to get, knowing that, in the worst case, they will lose nothing. So frequently has this been done that one might almost lay down a fourth regulative principle, the principle of splitting the difference.

During all the years since the act was passed, political power has been in the hands of the Liberal Party, so that both the government and the judges have been disposed to do what they could for the working class. If they have not done more, it is because they could not, or thought they could not, without grave injury to the industries of the country. Justice Williams, the first president of the Court, said in a letter to the London Times: "The duty of the Court is to pronounce such an award as will enable the particular trade to be carried on, and not to impose such conditions as would make it better for the employer to close his works, or for the workmen to cease working, than to conform to them."[1]

The rigidity of system which is characteristic of the railway rates seems to be taking possession of the regulation of wages also. When the awards were

[1] Broadhead, op cit, p. 57.

few in number it was easy to make a change without any serious disturbance to industry, but now that they are numerous and their scope has been widely extended, it is difficult to make a change in one without making many other changes, for the sake of adjusting conditions of labor to the changing conditions of business. There is, therefore, a temptation to abide by the established conditions. As Dr. Clark says: "The total effect is to make the condition of status more rigid." [1]

Another stumbling-block in the way of advance in wages is the inefficient or marginal or no-profit employer, who, hanging on the ragged edge of ruin, opposes the raising of wages on the ground that the slightest concession would plunge him into bankruptcy. His protests have their effect on the Arbitration Court, which tries to do justice to all the parties and fears to make any change for fear of hurting somebody. But the organized workers, caring nothing for the interests of any particular employer, demand improved conditions of labor, even tho the inefficient employer be eliminated and all production be carried on by a few capable employers doing business on a large scale and able to pay the highest wages.

This is not to say that even the most efficient employers could afford to pay wages much in excess of those now prevailing. Dr. Findlay has made an elaborate statistical examination of this matter, and arrives at the conclusion that if all the net profits, excluding interests, of all the employers in New Zealand, except farmers, were divided among all their employees, the yearly increase in wages would be very small. He says: "Any attempt to lay violent hands upon these profits would put an end to all

[1] The Labor Movement in Australasia, p 204

business enterprise, and thus destroy the very source from which the profits are drawn." [1] From such a statement as this it is but a step to the position that wages are determined chiefly by economic laws, and that the Arbitration Court can cause, at most, very slight deviations from the valuations of the labor market.

It is not easy to show that compulsory arbitration has greatly benefited the workers of the Colony. Sweating has been abolished, but it is a question whether it would not have disappeared in the years of prosperity without the help of the Arbitration Court. Strikes have been prevented, but New Zealand never suffered much from strikes, and it is possible that the workers might have gained as much or more by dealing directly with their employers than by the mediation of the Court. As to wages, it is generally admitted that they have not increased more than the cost of living. A careful investigation by Mr. von Dadelszen, the Registrar General, shows that, while average wages increased from 1895 to 1907 in the ratio of 84.8 to 104.9, the cost of food increased in the ratio of 84.3 to 103.3. No calculation was attempted for clothing or rent.[2]

It is a common opinion in New Zealand that the increase in the cost of living has been due largely to the high wages and favorable conditions of labor fixed by the Arbitration Court, but so widespread a result cannot have been due to local causes alone. There may be, and probably are, cases in which the awards of the Court have compelled manufacturers to raise the prices of their products, but these are doubtless exceptional. If it is true that in most cases the Court has awarded wages no higher than the

[1] Labor and the Arbitration Act, 1908, p 10 [2] Year-Book, 1908, p 539

industries could stand, and little, if any, higher than the labor market would have effected without arbitration, then it is probable that the increased cost of living has been due chiefly to other causes, to the prosperity of the Colony, the prosperity of the world in general, and the increased production of gold during the period under discussion. Some think that the rise in prices has been due to combinations of manufacturers and merchants, but tho it is true that such combinations exist, their control over prices appears to be very slight.[1]

Manufacturers complain that the awards have been so favorable to the workers as to make it difficult to compete with British and foreign manufacturers, and demand that either the arbitration system be abolished or that they be given increased protection by higher duties on imported goods. It is claimed that the growth of manufactures has not kept pace with the growth of population and the importation of manufactures from abroad.[2] There is reason to think that the boot trade, fell-mongering, and flax-milling have been hampered by the awards, particularly during the depression of 1908–9, when the manufacturers could not adjust wages to the depressed conditions of the market.[3] Mr. Broadhead says: "It is commonly remarked among business people that industrial enterprise in New Zealand has been checked to a considerable extent by the labor laws of the country. It is an undoubted fact that many people having money to invest have been

[1] Parliamentary Debates, vol cxlv, p 212, speech by Mr Ell, Clark, The Labor Movement in Australasia, p 236, Scholefield, New Zealand in Evolution, p. 214.

[2] Broadhead, op cit, pp 136, 219.

[3] Aves, op cit, p 169, Reeves, State Experiments, vol. II, p. 147; Report of the New Zealand Employees' Federation, 1908.

careful to avoid any concern in which labor is the chief item in expenditure. It may be remarked, too, that hardly any new industry has been started for some years." [1] Even Mr. Millar spoke in the same strain in the House: "There is a limit beyond which wages cannot go in this country or any other country. The limit between the cost of the imported article and the manufactured article is so small now that the least thing can turn it one way or another." [2]

There is such agreement among manufacturers as to the effect of compulsory arbitration in increasing the cost of production that their statements cannot be lightly dismissed, especially as many unbiased writers concur in the opinion. From 1896 to 1901, there was a period of rapid growth of manufacturing establishments, many of them new to New Zealand, and in those years the number of hands employed and wages paid increased by 56 per cent and 63 per cent respectively.[3] From 1901 to 1906 the growth of manufactures was considerable, tho not so great as during the former period. In this time the population increased by 15 per cent, the total imports by 29 per cent, the number of hands employed in manufactures by 22 per cent, the wages paid by 33 per cent, and the value of the output by 31 per cent.[4] However, the growth was chiefly in manufactures which have to do with the preparation of raw materials for market, such as meat freezing and preserving, butter and cheese factories, saw-mills and flax-mills. Most of the other manufacturing establishments show a moderate improvement, such as printing establishments, grain mills, tailoring, furniture and

[1] Broadhead, op. cit., p. 218.

[2] Parliamentary Debates, vol. clxv, p. 184.

[3] Year-Book, 1902, p. 103.

[4] Year-Book, 1909, p. 405.

cabinet-making, coach building, brick works, agricultural implement works, and sugar-boiling. Others, including woolen mills, show a very slight improvement, while several important industries, including tanning and fell-mongering, iron and brass foundries, clothing and boot and shoe factories and breweries, show a falling off.

These statements refer only to the value of the output, as shown in the reports of the census. Statistics relating to the profits of manufacturing, as given in the census reports for 1901 and 1906, in so far as they are to be relied on, show that profits in general are not at all high. In 1901 the total value of manufactures was £17,853,113, while the combined value of the materials used and the wages paid was £11,052,417. In 1906 the value of the manufactures was £23,444,235; the value of materials, £13,163,692; the amount paid in wages, £4,457,619; and the combined value of materials used and wages paid, £17,615,311.[1] According to these figures, the gross profit in 1906 was less than in 1901, altho a much larger business was done in the latter year than in the former. Also, if one were to deduct interest, and other items of cost, the net profits of manufacturing enterprise would appear to be low. This conclusion is confirmed by the income-tax statistics, which show that, in the year 1907–8, the gross profits of traders, manufacturers, and business men were £7,775,579, upon a capital of at least £40,000,000. This, again, does not seem to be a high rate of gross profit, considering the risks undertaken by business men. The profits, however, of merchants are probably higher than those of manufacturers, if we except meat-freezing and kindred establishments.[2]

[1] Year-Book, 1909, p 419 [2] Findlay, Labor and the Arbitration Act, 1909

Unquestionably, manufactures, with the exception of the great industries which work up raw materials for market, are not doing any too well. But it is not likely that compulsory arbitration is the chief cause of this. The high wages which manufacturers have to pay are due chiefly to industrial conditions which always prevail in a new, thinly populated country with great natural resources awaiting development. The more prosperous the agricultural population, the higher wages must be, and the more difficult it is for manufacturers to find workers. This is particularly true of women workers, for whom there is an active demand in the matrimonial market.

New Zealand manufacturers produce on a relatively small scale, find it hard to compete with imported goods produced under totally different conditions, and are inclined to throw the blame upon the Arbitration Court. Certainly, the Court has done nothing to lower the cost of production, except in the way of preventing strikes and has probably increased it somewhat, not so much by fixing minimum wages as by granting, in many cases, limitation of apprentices, prohibition of piece-work, and other restrictions. As Dr. Clark says: "All regulations restricting the freedom of employers in conducting their business probably add to the cost of production." [1]

Many employers believe that the cost of production has been increased by a decline in the efficiency of labor due to the fixing of high minimum wages, which discourages capable men from doing their best work. Mr. G. T. Booth says: "I am quite sure that the arbitration system has resulted in a loss of industrial efficiency far greater than ever resulted from strikes." Mr. Booth asserts that the annual output

[1] The Labor Movement in Australasia, p 233

per man in a certain industry (engineering) has fallen from £254 in 1901, to £224 in 1906, but, as Mr. Ell pointed out, this may have been due to other causes.[1] There is much difference of opinion about this matter. In reply to one of the questions sent out by Mr. Aves, 6 employers and 13 employees said that efficiency had been increased, while 29 employers and 1 employee said that it had been decreased.[2] It seems probable that the "go easy" way of working has gained ground in New Zealand in recent years, but the same phenomenon is observed in other countries, and the tendency of trade unionism everywhere seems to be toward a levelling down which cannot but discourage a high degree of industrial efficiency.

The employers, at best, give but a grudging approval to the Arbitration Act. The farmers, as a class, are decidedly opposed to it.[3] Mr. Massey, the leader of the Opposition, said in the House that he was opposed to compulsory arbitration.[4] Mr. William Scott, secretary of the Otago Employers' Association, says: "Thirteen years' experience as an employers' advocate before the Court compels me to admit that any method of regulating wages by act of Parliament must in the end result in failure."[5] Mr. Broadhead very fairly sums up the attitude of the employers, thus: "Some, for business or other reasons, decline to express an opinion on the act, but say that the act has been diverted from its original purposes; others, and these, I think, form a large proportion of the employers in the Colony, have

[1] Parliamentary Debates, vol cxlv, p 210, Annual Report of the Canterbury Employers' Association, 1908

[2] Aves, op cit , pp. 109, 180

[3] Evening Post, Wellington, June 30, 1908.

[4] Parliamentary Debates, vol cxlv, p 195.

[5] Scott, Address before the New Zealand Employers' Federation, August 28, 1907.

little or nothing to say in favor of the act, and express the opinion that it would have been better for the industries of the Colony if it had never existed." [1] It should be remembered, however, that these opinions were expressed when the employers were alarmed and disgusted with the act because of several important strikes. Since that time they have come to realize that they might have lost more by strikes than they have ever lost by arbitration; and, since the workers have been dissatisfied, the employers are more disposed to stand by the act, or to maintain a neutral attitude, waiting to see what the workingmen will do.

The dissatisfaction of the employers was not the chief of the causes which brought about the amendment Act of 1908. The original act and most of the amendments were passed for the benefit of the working class and had they been satisfied there would have been no material change. The workers expected great benefits from the act, and for some years they were well satisfied with the results. Travellers from abroad, like Mr. Henry D. Lloyd, found almost everybody loud in praise of the act, and only a few critics, like Mr. John MacGregor, prophesying against it. When M. Félicien Challaye visited New Zealand in the year 1900, he attended a meeting of the Wellington Trades and Labor Council, and got the members to express individually their opinion of the act. One after another they recited the advantages of compulsory arbitration: higher wages, shorter hours, steady employment, and other benefits. "It has put thousands of pounds in our pockets," said one member. "It is a part of our religion," said another.

But as the early awards expired and fresh disputes

[1] Broadhead, State Regulation, p. 208.

arose, the Court frequently declined to make substantial concessions to the workers, who soon began to express their dissatisfaction. According to Mr. Broadhead, the first protest against an award was made at Christchurch, in 1901, when the Christchurch Operative Bootmakers' Society unanimously passed a resolution declaring that the recent award in their trade was "against the weight of evidence." In August of the same year the Canterbury Trades and Labor Council condemned the action of the Court in refusing to make a complete award in the wool-scouring and fell-mongering trades.[1]

From this time complaints against the Court became more frequent and bitter, not because wages were reduced, but because they were not increased, and because other demands were not granted. Great dissatisfaction was aroused because of the Dunedin Seamen's Award of February, 1906, when the Court refused to grant the demands of the seamen, on the ground that no substantial difference in circumstances had arisen since the last award. The workers' representative dissented from this decision, which aroused great indignation among all classes of workers. The secretary of the Seamen's Union is reported as saying: "The seamen have given so-called arbitration a very fair trial, extending over about ten years. The most cherished principles that they are striving for have been denied us by the Court, and improvements in the seamen's condition are evidently not obtainable under the present system of arbitration." Numerous resolutions were passed by labor organizations condemning the action of the Court, and the Australasian Federated Seamen's Union of Wellington passed a resolution recommending that a ballot be taken of

[1] Broadhead, op. cit., p. 164; Book of Awards, vol III, p 463.

all the members in New Zealand on the question whether the registration of the union under the act should not be cancelled. The seamen also considered the advisability of striking, thus reviving echoes of the maritime strike of 1890.

At the Meeting of the Trades and Labor Council of New Zealand, at Christchurch, on April 19, 1906, Mr. D. McLaren moved: "That this Conference has no confidence in the Arbitration Court as at present constituted," but the motion was lost by a vote of 11 to 5.[1] The motion was a veiled attack on Mr. Justice Chapman, the president of the Court. The term of Mr. Justice Chapman expired at the end of the year, when, at his own request, he was transferred to the regular work of the Supreme Court. He was succeeded by Mr. W. A. Sim, of Dunedin, but with no better results from the workers' point of view. Some have gone so far as to suggest that the Judge of the Arbitration Court should be elected by the people, in the hope that the unions might control the election, but this would be at variance with all British traditions and could not be brought about.

The dissatisfaction finally came to a head in a series of strikes beginning with that of the tramway employees in Auckland, on November 14, 1906. Before this time there had been a few unimportant strikes[2] and the Auckland strike was not important except as indicating the changing attitude of the workers toward the act. The conductors and motormen, 222 in number, left their cars about five o'clock on the afternoon of November 14, and remained out

[1] Report of the Annual Conference of the Trades and Labor Councils of New Zealand, 1906

[2] Reeves, State Experiments, vol. II, p. 139.

until about eight o'clock, when the company acceded to their demands. The men's grievance had to do with the summary dismissal of a conductor for alleged misconduct, and the dismissal of ten other employees for refusing to teach "learners." Six months later the company was brought before the Court and fined £5 and costs for having dismissed the men without the fourteen days' notice required by the award. Of all the men who went on strike, only two were brought before the Court, and these were fined £1 each, without costs. The Court was lenient because it did not consider that the strike had been preconcerted.

The next strike began on February 12, 1907, when the slaughtermen employed by two meat-freezing establishments near Wellington struck for higher wages, demanding 25*s*. per 100 sheep or lambs slaughtered, instead of the old rate of 20*s*. The trouble was settled by a compromise at 23*s*. The Gear Company resumed work on February 18, and the Wellington Meat Company on the following day. Encouraged by this success, the slaughtermen in various parts demanded higher wages and went on strike when these were refused. In every case a compromise was effected at 23*s*. It was not until March 16 that the strikes came to an end. Presently, the men were cited to appear before the Arbitration Court and fines were imposed. The original strikers escaped on a technicality, but all the rest, 266 in number, were condemned to pay £5 apiece, the fines amounting to £1330 in all. Up to March 31, 1909, £776 was recovered, leaving £553 unpaid, since the delinquents could not be found, some having gone back to Australia and others being scattered in different parts of the Colony. Since that time orders of attachment of wages were served on those

who had ignored the final notice, and by this means about £100 more were secured.[1]

Early in the year 1908, a strike occurred among the coal miners of the West Coast which continued for eleven weeks. Seven miners had been dismissed by the manager of the Blackball Company, whereupon all the colliers, 120 in number, went on strike on February 27. The men asserted that the miners dismissed were being victimized because they were active unionists and socialists. The Company was willing to compromise and offered to reinstate the men, but the miners refused to return to work unless some arrangement were made to prevent a similar occurrence in the future, and suggested that when men were to be dismissed they should be selected by ballot. They also demanded thirty minutes' lunch time and a strict enforcement of the " bank to bank " principle, according to which the miners were to be underground only eight hours from bank to bank, that is, from surface to surface.

The Department of Labor attempted to effect a settlement of the trouble, but without success, whereupon the union was cited before the Arbitration Court and a fine of £75 was imposed. The strike continued and the union went so far as to refuse to pay the fine, alleging that it had no funds. In this position the union was generally condemned by public opinion, but supported by a number of unions by resolutions of sympathy and gifts of money. Finally, the Arbitration Court decided to proceed against the men individually for their share of the fine. The whole of the fine, together with the costs of collection, amounting to over £147, was recovered by means of attachment orders under the Wages Attachment

[1] Annual Report of the Department of Labor, 1909, p 25

Act of 1895. According to a recent decision of the Court of Appeals, the men could have been imprisoned, if they had refused to pay, for a maximum term of one year, but it was not necessary to do this and public opinion was not in favor of imprisonment for the offence. The strike was ended about the middle of May, when the Company conceded practically everything that the men had demanded.[1]

On May 21, 1908, a second strike of motormen and conductors occurred at Auckland and lasted until Monday, May 25. The cause of the trouble was similar to that of the strike of November, 1906. Mr. Edward Tregear, the Secretary for Labor, and Mr. A. M. Myers, the Mayor of Auckland, succeeded in inducing the parties to refer all the questions to a special board of conciliation under Sections 51 and 52 of the Compilation Act, 1905. This is the only case in which these sections have been applied to the settlement of a dispute. The finding was delivered on July 25, and was largely favorable to the employees. Action was taken by the Department against the Union for bringing about a strike, and a fine of £60 was imposed, which was paid within twenty-five days.[2] Later in the year, when the amendment act was passed, it provided for Councils of Conciliation similar to the special board used to settle this dispute.

A strike of bakers began in Wellington on June 29, 1908, shortly after the Court had made an award granting an increase of wages, but not so great as had been desired. Altho the strike lasted seventy-six days, it was a complete fiasco, causing no shortage of bread, and the bakers were glad to return to work

[1] The Evening Post, Wellington, February to May, 1908; Annual Report of the Department of Labor, 1909, p 26.

[2] Report of the Department of Labor, 1909, p. 26.

on the terms of the award. The penalty in this case was £100, which was paid within one week, as directed. Action was taken against four others for aiding and abetting the strike. The Court ruled that the provisions of the act did not cover such cases, and held "that the strike was complete on the day that the strike took place, and that it was impossible for the respondents to be guilty of the said offences by anything which they did after the date the strike took place." [1] This defect in the law was remedied by the Amendment Act of 1908, which provided penalties for aiding and abetting an unlawful strike or lock-out, and made a strike a continuing offence.

On September 16, 1908, the Hon. J. A. Millar, the Minister of Labor, presented to the House a complete list of the strikes which had occurred since November 14, 1906. He said: "The total number of strikes is 23, and the total number of strikers 1117. The men rendered idle were 2389; the duration of strikes was 316 days; and the loss of wages to workmen amounted to £17,667. The approximate loss to employers was £15,688. This will give honorable members a fair idea of what the strikes cost the country; and this is, after all, upon a very small scale, as will be seen." [2]

Trouble in the mining industry arose again because of the new Workers' Compensation Act of 1908, which was to go in force on January 1, 1909. The act provided for employers' liability, not only in case of accident, as formerly, but for some diseases characteristic of certain industries, including pneumoconiosis, or miners' consumption.[3] In order to pro-

[1] Report of the Department of Labor, 1909, p 26.

[2] Parliamentary Debates, vol cxlv, p 187

[3] Evening Post, Wellington, December 30, 1908.

tect themselves and the employers against the additional risk, the insurance companies required that the workmen concerned undergo a medical examination to show that they had not already contracted pneumoconiosis or any other of the diseases mentioned in the act. This the miners refused to do, with the result that most of the coal mines in the Inangahua district were closed pending a settlement of the difficulty. The trouble was neither a strike nor a lock-out, but a deadlock, due to a very peculiar situation created by the act. Altho a number of gold miners had submitted to examination, the Waihi Miners' and Workers' Union, representing about 1700 men, on January 7 passed the following resolution: "That this union pledges itself not to submit to a medical test. That we endorse the action of those who refused to submit to a test, and are prepared to come out in a body in their support should they not be reinstated by next Monday." [1]

The situation was very grave. The State Insurance Department had very properly refused to assume the extra risk without medical examination, and the government had stood by them, but on hearing of the action of the Waihi union, the government made a complete change of front, authorized the Insurance Department to issue policies without examination, and agreed to indemnify the Department against loss, pending further legislation.[2]

This extraordinary concession was received with astonishment by the public, especially by employers and insurance men, but it prevented a serious strike, and the trouble about pneumoconiosis was ultimately settled by the employers' agreeing to take their own

[1] Evening Post, Wellington, January 8, 1909.

[2] The Evening Post, January 9, 1909.

risks against the disease or accept the Insurance Department's offer to insure their workers at an increased rate without medical examination.[1] The whole affair illustrates the difficulty of applying business principles to an enterprise carried on by a democratic government.

The pneumoconiosis deadlock resulted in a strike of the coal miners at Huntly, who wished to have four so-called "blacklegs" degraded for having submitted to a medical examination, but the miners were clearly in the wrong, accepted a compromise proposed by the Company, and went back to work on January 27.

A trifling strike occurred on January 15, 1909, when seventeen fell-mongers employed by the Hawkes Bay Freezing Company at Daki Daki discontinued work for one hour because the Company would not allow them ten minutes, morning and afternoon, for a "smoke-oh," which was not provided for in the award. The men's demand was granted, but the Department took action against the men individually before Mr. S. E. McCarthy, a stipendiary magistrate, who inflicted penalties of £1 each against the respondents.[2]

From this time until November, 1909, there were practically no strikes. Possibly this was due to the industrial depression, possibly to the desire of the workers to give the Amendment Act of 1908 a fair trial, altho they did not expect much benefit from it. In November, trouble arose in the State colliery at Point Elizabeth, near Greymouth. The men wanted the Department to do the trucking, and the Department desired to make a reduction in the hewing rate

[1] Annual Report of the Canterbury Employers' Association, 1909, p 11.

[2] Annual Report of the Department of Labor, 1909, p. 26.

to compensate it for the extra expense of trucking. The manager and the union could not come to terms, the union's executive called a strike on November 23, and all the miners, over 400 in number, quit work. It was an odd coincidence that the strike occurred soon after the beginning of a great strike of coal miners at Newcastle in New South Wales, when some people were demanding the nationalization of the collieries as the best way of preventing strikes. On this point, The Press, of Christchurch, an opposition paper, said: "Governments, especially as we know them in New Zealand, are, indeed, much more squeezable by labor agitators than are private employers, and in this fact lies much of the danger to the taxpayer of State incursions into the domain of private enterprise."

Another interesting fact is that the miners were encouraged in their demands by the statements of the Department that the State collieries were earning large profits, altho some financial critics deny that any such profits were earned.[1] One of the miners is reported as saying: "We are not going to sweat ourselves to pay fat salaries to Sir Joseph Ward and the big bugs. The profits of the State mine should go to the men who dig the coal."[2]

After much discussion, the Government, being convinced that the miners had substantial grievances, receded from the position previously taken, and the miners' representatives received the assurance that the Minister of Mines, the Hon. Roderick McKenzie, would visit Point Elizabeth after the session of Parliament and would give the men conditions not less favorable than those obtaining in

[1] The Star, Christchurch, November 24, 1909

[2] The Evening Post, November 27, 1909

other mines. The miners resumed work on Monday, December 13, with the feeling that they had won a great victory. According to agreement, Mr. McKenzie paid a visit to the West Coast and effected a compromise on January 5, 1910. The miners were not prosecuted for striking, for they were no longer under the jurisdiction of the Arbitration Court, since they had allowed their registration to be cancelled by the Department of Labor for failing to send in the annual returns required by law.

On the day after this settlement was effected, the Wellington Slaughtermen's Union sent a notice to the Gear Company and the Wellington Meat Export Company that they would go on strike in 14 days if their employers would not grant them a rate of 25*s.* a hundred for all sheep and lambs not otherwise specified, besides other concessions. The agreement entered into after the strike of 1907 had expired on June 10, 1909, after which it continued in force while negotiations for a new agreement were pending. The employers, wishing to have the dispute heard by the Conciliation Commissioner, Mr. P. Hally, according to the new law, drew up a statement and appointed assessors. But the union neglected to appoint assessors, preferring to settle directly with the employers. On January 14 and 15, a conference was held at which Mr. Hally presided, tho not officially as Commissioner. The conference arrived at terms of peace, by which the slaughtermen obtained practically all that they had demanded. The agreement was to go to the Arbitration Court to be constituted an award for three years.[1]

The strikes of 1907 and 1908 caused a widespread opinion among employers and the general public that

[1] Evening Post, January 15, 1910

the act should be amended, chiefly for the sake of preventing strikes. The laborers, as a class, were not enthusiastic about the matter, since the proposed amendments were designed to compel them to obey the law rather than to bring them any additional benefits. A bill was brought in by the Minister of Labor in the session of 1907, but received little attention. In the session of 1908 the Minister again brought forward a bill, which was actively debated. Finally, the Industrial Conciliation and Arbitration Amendment Act, 1908, was passed, and went into effect on January 1, 1909. The following is a brief summary of the leading provisions of the new law.[1]

It gives elaborate definitions of the terms "strike" and "lock-out," stress being laid in both cases on the "intention" of the workers or employers in causing a strike or a lock-out.

The terms "unlawful strike" or "unlawful lock-out" mean a strike or a lock-out by parties bound by an award or industrial agreement in the industry affected. For example, the strike of the miners in the State colliery in November, 1909, was not an "unlawful strike," for the registration of the Union had been cancelled and there was no award or agreement in force.

Every worker who is a party to an unlawful strike is liable to a penalty not exceeding £10; and every employer who is a party to an unlawful lock-out is liable to a penalty not exceeding £500.

The maximum penalty for aiding or abetting an unlawful strike or lock-out is, in the case of a worker, £10; and in the case of an industrial union, trade

[1] Summary of the Industrial Conciliation and Arbitration Amendment Act, 1908, by Henry Broadhead.

union, or employer, or any person other than a worker, £200. No penalties are provided for other than "unlawful" strikes or lock-outs.

Special penalties are to be inflicted when strikes or lock-outs occur in certain specified industries, — the manufacture or supply of coal gas; the production or supply of electricity for light or power; the supply of water to the inhabitants of any borough or other place; the slaughtering or supply of meat for domestic purposes; the supply of milk for domestic consumption; the sale or delivery of coal; the working of any ferry, tramway, or railway used for the public carriage of goods or passengers. These penalties are to be inflicted if a worker strikes without having given at least fourteen days' notice to his employer, or if an employer fails to give a similar notice to his employees of his intention to lock-out. It was to escape these special penalties that the Slaughtermen's Union gave notice to their employers, on January 6, 1910, of their intention to strike at the expiration of fourteen days, unless their demands were granted. Strange to say, special notice is not required in the case of a strike or a lock-out in the mining of coal, but only in the sale or delivery of it.

The judgment in any action is enforceable in the same manner as a judgment for debt or damages in the magistrate's court. The surplus of a worker's wages may be attached above the sum of £2 a week in the case of a worker who is married, or who is a widower or widow with children, or above the sum of £1 a week in the case of any other worker. Imprisonment for refusal to pay fines is abolished.

The Boards of Conciliation are abolished, and Councils of Conciliation take their place. The only

permanent members of these councils are the Commissioners of Conciliation, at present three in number, who are appointed by the Governor. In case of a dispute, one of the commissioners goes to the scene and tries to effect a settlement in an informal manner. If unsuccessful in this, he sets up a Council of Conciliation consisting of one, two or three assessors representing the employers, and an equal number representing the workers. Except under special circumstances, every assessor "must be or have been actually and *bona fide* engaged or employed either as an employer or as a worker in the industry."

Every dispute must be referred to the Council before proceeding to the Court, and in every case the Council is required to make a recommendation, which has no binding force, but operates merely as a suggestion for the amicable settlement of a dispute by mutual agreement and as a public announcement by the Council as to the merits of the dispute. In this respect, the new law resembles the Lemieux Act of Canada, which is a system of investigation and conciliation. However, an agreement, when filed, has all the force of an award, and, if the Council fails to effect a settlement, the dispute is automatically referred to the Arbitration Court.

The Amendment Act of 1908 is thus a modification of the former system in the direction of voluntary conciliation. Mr. Millar said in the House: "The main principle of the Bill is to let us go back to conciliation as far as possible." [1] At another time he said: "In my opinion there are times when the compulsory element requires to be used. I desire to keep the Arbitration Court quite in the background, like a spectre that may be brought forward and made

[1] Parliamentary Debates, vol cxlv, p 186

substantial if required." [1] Thus, the new law is in accordance with the views of Mr. Reeves, the author of the act of 1894, who believed that most disputes could be settled by conciliation, and favored arbitration only as a last resort. However, the amendment act still provides for compulsory, and not voluntary conciliation, and there is reason to think that compulsory conciliation is not conciliation at all, but compulsory arbitration under another name, and is, in the last analysis, governmental regulation of wages and all other conditions of labor.

But there is a way by which the workers may altogether evade the arbitration law and strike as much as they please without rendering themselves liable to penalties. After the expiration of an award, they have only to cancel their registration or allow it to be cancelled by the Department for neglecting to send in their annual returns. It has already been noted that this was done by the Point Elizabeth miners, who, therefore, could not be punished for striking. During the year ending March 31, 1909, sixteen workers' unions, and a like number of employers' unions, had their registration cancelled for the same neglect, while two other unions formally cancelled their registration.[2] In the words of Mr. Millar: "The right to strike has not been denied by the House. If the men do not like to voluntarily surrender their rights, let them register under the Trades Unions Act and go on strike every day in the week; but when we pass an act giving them advantages they could not otherwise get — giving them permanency of employment and regulating wages

[1] Parliamentary Debates, vol. cxlv, p 480.

[2] Annual Report of the Department of Labor, 1909, p 23

and so preventing sweating — I think it is not too much to ask that they should voluntarily carry out their agreement and not strike." [1]

There are some weak features in the new act, as there must be in any attempt to deal with so difficult a subject, but hitherto it seems to have had a fair degree of success.[2] Mr. F. W. Hobbs, president of the Canterbury Employers' Association, says: "The new system has not had a long enough trial to warrant any definite opinion being expressed as to whether the expectations formed of it will be realized. Undoubtedly, a large majority of the disputes which have come before the Councils have been settled, either wholly or in part, and thus the work of the Arbitration Court has been considerably lessened. The operation of the act will be closely watched, as it is generally recognized that its failure will bring the end to compulsory arbitration as a means of settling our industrial disputes." [3]

Undoubtedly, most of the people of New Zealand earnestly desire that the act may prove successful, and the employers, as a class, notwithstanding their frequent criticisms and their dislike of regulation, would rather have arbitration than strikes, provided that the Court is reasonable in its decisions, as it has been in the past, and does not put upon them a greater burden than they can bear. The employers will not move for the repeal of the act, but will throw the responsibility for its success or failure wholly upon the shoulders of the workers.

[1] Parliamentary Debates, vol cxlv, p. 482

[2] A series of ten articles in the Evening Post, Wellington, September 17 to October 5, 1908

[3] Annual Report of the Canterbury Employers' Association, July 23, 1909.

The workers' position is embarrassing. The original act was passed for their benefit as well as to prevent strikes, but when it could no longer be used as a machine for raising wages they were the first to rebel against it. Doubtless, a large proportion, if not a majority, of union laborers have been much dissatisfied with the act, and yet most of them are disposed to give the amendment act a fair trial. The more radical among the workers, many of whom are socialists of the type of Tom Mann, regard the Arbitration Court as an instrument of capitalism in keeping the working class in subjection, would abolish the act, and inaugurate a period of industrial warfare as a prelude to the social revolution.

But the more conservative among the workers wish to do all they can to preserve industrial peace. The Hon. J. T. Paul, one of the most capable of the labor leaders, said in the Council: "I have no hesitation whatever in saying that I am totally opposed to the strike, that I see absolutely no good in it, and I oppose it for one reason, that it is against the interests of those whose welfare I have most deeply at heart, and against the interests of the general community. Strikes cannot be supported, because they do not help the worker." In the same debate Mr. Paul quoted with approval the words of Mr. Pritchard, who was a prominent and almost violent supporter of the Blackball miners in the strike of 1908, who said: "There is a tendency among a few trade union leaders to influence the members of their organizations to cancel the unions' registration under the act and I wish as a unionist to protest emphatically against such action on their part. I want to see the best possible method of obtaining as much as possible of the product of labor for the laborer,

and, to my mind, the best system so far discovered is that of compulsory arbitration." [1]

The workers are probably in error in thinking that the wages of all classes of labor can be raised much above the market value by means of unions and strikes, by the awards of a court, or by any means other than increasing the efficiency and limiting the supply of labor. It would probably be the best policy for the working class to accept rates of wages based on the market value of labor, to encourage the highest possible efficiency, and to increase the provision already made against accident, sickness, and old-age, by means of insurance supported by taxation of the incomes of the rich.

But in particular cases, as has been shown by the success of most of the recent strikes, organized labor can frequently force concessions which the Arbitration Court would not grant, and which, if given to all of the working class, the industries of the Dominion could not stand. The unionized workers, then, numbering about 50,000, out of about 420,000 breadwinners, have interests somewhat opposed to those of the non-union workers as well as to the interests of the employers and many other people. If, therefore, the unions adopt the policy of cancelling their registration, and try to force concessions from their employers by means of strikes, they will lose the advantages enjoyed under the act, and, what will be far more serious, they will lose the sympathy of the general public, by whose assistance they have obtained the most advanced labor legislation in the world.

The future of compulsory arbitration will depend upon the attitude of the workers. They could have

[1] Parliamentary Debates, vol. cxlv, p. 570.

the act repealed at any time, but they are not likely to do that. If they find that they gain nothing by compulsory arbitration, they will simply allow their registration to be cancelled, after which they may strike or not as they see fit, and the act will become a dead letter. Another and more consistent course which they might adopt would be to stand by the act and take a more active part in politics with the hope of being able to control the appointment of the Judge of the Arbitration Court, through whom they might obtain concessions impossible to secure under the present political conditions. This, however, has the appearance of a forlorn hope, for even if an independent labor party could step into power, as in Australia, they could not do much more for labor than has been done by the Liberal Party, without serious damage to the industries of the Dominion and serious injury to themselves.

Dr. Findlay sums up the subject thus: "It should be the aim of every country to prevent strikes, not by severe pains and penalties, but by providing, if it be possible, such conditions of labor, and such a fair, prompt, and competent tribunal as will secure to the workers all they can ever reasonably hope to attain by a resort to the blind force of a strike." [1] At present, the workers do not expect to gain much by appealing to the Arbitration Court, but to keep them loyal to the government and the Court they perhaps require not pains and penalties, but additional inducements of some sort. Possibly the system of arbitration could be brought into some relation to the system of insurance and pensions, so that workers peacefully disposed might receive benefits not granted to those who prefer to appeal to force regardless of

[1] Labor and the Arbitration Act, p. 16.

the welfare of their fellow-citizens. However that may be, it is to be hoped that the interests of all concerned will be secured by methods of peace, and that there will be a successful outcome to the magnificent experiment of compulsory arbitration.

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